89-276

Supreme Court, U.S.
FILED
AUG 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

In The
SUPREME COURT of the UNITED STATES
October Term, 1989

FRANK A. ENGLAND, III,
Petitioner,

vs.

DORCAS HARDY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FRANK A. ENGLAND, III
Pro Se
129 Carlisle Street
Benicia, CA 94510
(707) 745 4257

2908

QUESTIONS PRESENTED

1. Absent administrative remedy, can the boundaries of the habeas corpus "custody" requirement arbitrarily be set, in the face of a direct jurisdictional challenge, such that Petitioner is denied direct access to petition his government for redress of grievances?

2. In the face of his duly declared rescission process, can Petitioner, absent informed consent, arbitrarily be held to accept both the benefits and burdens of Social Security, in any form whatsoever?

3. Absent informed consent and a voluntary waiver of substantive rights, can Petitioner arbitrarily be held to serve the political interests of the nation?

4. Can Petitioner abandon an artificial jurisdiction, foreign to his natural birthright, and reclaim his inherent standing as an inhabitant of National Domicile?

PARTIES

The parties to this action are those as set forth in the caption; proof of service is not indicated at this time.

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PETITION FOR WRIT OF CERTIORARI TO THE
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—o—

Petitioner respectfully requests demand for relief, such that a writ of certiorari be issued to the United States Court of Appeals for the Ninth Circuit to review its judgment entered May 19th, 1989, affirming a District Court denial of habeas corpus relief.

—o—

OPINIONS BELOW

The MEMORANDUM of the United States Court of Appeals for the Ninth Circuit is not for publication; the order denying rehearing is presented verbatim as Appendix A; the order denying oral argument is presented verbatim as Appendix B. The order of dismissal of the District Court for the Northern District of California is presented verbatim as Appendix C.

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JURISDICTION

The MEMORANDUM of the Court of Appeals was filed April 10, 1989; a Petition for Rehearing was filed by Petitioner which was denied by the Court of Appeals May 19, 1989. Jurisdiction of this Court is conferred by 28 U.S.C., § 1254.

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CONSTITUTIONAL PROVISIONS

The text of those Constitutional Provisions deemed by Petitioner to be material to this petition are set forth in Appendix D, said provisions being Article I, section 9, clause 2 of the United States Constitution; and Articles of amendment I, IV, V, IX, X, and XIII.

———————0———————

STATEMENT OF THE CASE

This controversy originated in July, 1984, when Petitioner, Frank A. England, III, initiated his unilateral withdrawal from voluntary participation in the federal social security program. Subsequent communication with the Social Security Administration and Commissioner Hardy made it clear that remedy appropriate to the nature of the case is not available at the administrative level.

Pursuant to the failure of the SSA to address the merits involved or abate the manda-

tory contributions from his earnings, Petitioner filed an Application for Writ of Habeas Corpus in the United States District Court for the Northern District of California on February 8, 1988, demanding relief from the imposed jurisdiction of the SSA; jurisdiction to grant writs of habeas corpus is conferred by 28 U.S.C., § 2241.

In dismissing the Application on March 28, 1988, District Court denied subject matter jurisdiction over the case on the grounds that Mr. England is neither a prisoner nor in custody.

Petitioner timely filed Notice of Appeal on April 6, 1988, in the United States Court of Appeals for the Ninth Circuit, and Brief for the Appellant was filed on June 1, 1988. The brief was heard on the merits April 5, 1989 without oral argument, affirming the decision below; rehearing was also denied.

Petitioner, therefore, timely files this

Petition for Writ of Certiorari, respectfully requesting that this Court search its conscience regarding the arbitrary limitations of the terms "prisoner" and "custody" as they apply within the purview of the Habeas Corpus Statutes and the "due process" clause of the Fifth Amendment.

Petitioner further requests demand for relief and all due consideration concerning the highly relevant issues of political servitude and debt bondage as they are perceived by him to be an imposition against his direct, individual, non-political access to the protections and guarantees of the organic federal constitution, the Bill of Rights, and the Thirteenth Amendment.

Denial of Extension of Time was received by phone on August 11, 1989; written confirmation is pending and cannot be presented verbatim in the Appendix.

———————0———————

ARGUMENT

THE COURT OF APPEALS FOR THE NINTH CIRCUIT HAS DECIDED A QUESTION PERTAINING TO ARTICLE I, SECTION 9, CLAUSE 2 OF THE UNITED STATES CONSTITUTION, AND ARTICLES OF AMENDMENT I, IV, V, IX, X, and XIII, IN A WAY THAT IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

A. Petitioner has challenged the jurisdiction of the SSA as so regards his lawful right of choice to participate within the statutory confines of the Body Politic or not. No longer voluntarily choosing to lie in franchise as a voluntary debtor, he has so duly informed Respondent of his choice to return to his lawful standing of inherent common right, *sui juris* as so regards the statutory purview of the SSA. There clearly being no appropriate forum at the administrative level to afford Petitioner a meaningful hearing on the merits, he has petitioned the court for writ of habeas corpus to free him from the

unwarranted imposition of "mandatory contributions" that are withheld from his freehold earnings upon mere statutory presumption to do so, notwithstanding his ongoing objection.

> "Where one must at his risk await such enforcing procedure as the agency chooses to initiate,... the person has no remedy."
> *Hammond v. Lenfest*, 398 F.2d 705, hn11.

Petitioner seeks only to live his life as a man of inherent common right; he exercises only the strength of his convictions, the integrity of his soul, and his natural and inalienable rights, guaranteed and protected by the Supreme Law of the Land, the Bill of Rights, and the Common Law of England.

> "Habeas Corpus is a remedy to enforce rights."
> *Ex Parte Tantlinger*, 47 P.2d 301.

To be presumptively held to a condition of servitude must necessarily be construed as being in custody in light of Petitioner's ongoing communication and clear intention

to divest himself of all political legal interest. Failure to acknowledge his duly declared rescission of commercial entanglement subject to the purview of the SSA reduces his life to the status of a political prisoner; Habeas Corpus relief is both meaningful and appropriate in the instant case.

> "This legislation is of the most comprehensive character. It brings within the *Habeas Corpus* jurisdiction of every court and of every judge every possible case of privation of liberty contrary to the national constitution, treaties, or laws. It is impossible to widen its jurisdiction." *Ex Parte McCardle*, 6 Wall 318.

B. As it is well-settled that said "mandatory contributions" to the social security program are in the form of an excise tax, it is clear that some use of benefit, privilege, entitlement, or conferred right must be involved in order to impose the withholding of said "contributions". Petitioner has no argument with the long recognized constitutionality of the SSA as it so applies to

those persons who voluntarily or tacitly lie in franchise in one form or another, subject to the jurisdiction thereof and liable for social security withholding.

Clearly, "one who accepts the benefit of a statute cannot be heard to question its constitutionality." *Ashwander v. T.V.A.*, 297 U.S. 288,323. Or, in other words, "He who takes the benefit must bear the burden". California Civil Code, § 3521. Yet, where is the statutory authority that can arbitrarily set aside the following maxims of law:

> "*Invito beneficium non datur* - A benefit is not conferred on one who is unwilling to receive it... no one can be compelled to accept a benefit"
>
> "*Jus Abstinendi* - The right of renunciation; the right of an heir, under the Roman law, to renounce or decline the inheritance, as, for example, where his acceptance, in consequence of the necessity of paying the debts, would make it a burden to him." Black's Law, 2nd, 3rd, 4th, 5th.

C. Clearly, in the case of *Beck v. C.W. A.*, 800 F.2d 1280, the Court recognizes the

right of any citizen of legal status to free himself from the political aspects of any organization with which he disagrees in order to isolate himself from any form of coercive servitude; to function without the franchise of the Body Politic merely as a "core member", and nothing more. How then, can an individual of lawful standing be held to serve the created legal and political interests of the nation, absent a knowing, witting, and voluntary waiver of fundamental rights?

> "All persons familiar with the rights of English speaking peoples know that their liberty inheres in the scope of the individual's right to make uncoerced choices."
> *Browning v. Slenderella Systems*, 341 P.2d 859.

D. Mandatory participation within any jurisdiction, absent a clear and knowing waiver of rights, options to the contrary, or due process of substantive law, cannot be construed as a statutory benefit, privilege, or conferred right exercised freely.

Without option there can only be servitude, and, a choice between servitude and abject poverty is no choice at all. By its reluctance to hear the instant case on its merits, the Court, thus far, condones the presumptions that are used to hold Petitioner to

> "... a condition of enforced servitude, by which the servitor is restrained of his liberty and compelled to labor in liquidation of some debt or obligation, either real or pretended, against his will."
> *Peonage Cases*, 123 F. 671.

> "To compel one person to labor for another against his will is legalized thraldom."
> *Ex Parte Drayton*, 153 F. 986.

> "The compulsion which would force him to labor even for his own benefit... would equally constitute an element of servitude."
> *Slaughter-House Cases*, 16 Wall 36.

By exercising his most fundamental right of choice as an American National, at liberty to reclaim complete access to natural, inherent, and inalienable rights, both enumerated

and unenumerated, Petitioner has chosen to divest his freehold property and *Persona Designata* of all commercial activity, public interest, political participation, and obligation thereto.

> "The constitution expressly declares, that the right of acquiring, possessing, and protecting property is natural, inherent, and inalienable. It is a right not *ex gratia* from the legislature, but *ex debito* from the constitution. It is sacred; for, it is further declared, that the legislature shall have no power to add to, alter, abolish, or infringe any part of, the constitution."
> *Van Horne's Lessee v. Dorrance*, 2 Dall 304.

> "... where in the Constitution is to be found any grant of power - specific or reasonably implied - by which Congress is authorized to divest an American born citizen of his nationality...?"
> *Kiyokuro Okimura v. Acheson*, 99 F.Supp. 587,590.

Even though "it cannot be denied that the Legislature can name any privilege a taxable privilege..., the Legislature cannot name something to be a taxable privilege unless it is first a privilege." *Jack Cole Co. v.*

MacFarland, 337 S.W.2d 453. However,

> "The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individual's rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed."
> *Redfield v. Fisher*, 292 P. 813,819.

E. WHEREAS,

> "... habeas corpus cuts through all forms and goes to the very structure. It comes in from the outside, not in subordination to the proceedings, and although every form may have been preserved, opens the inquiry whether they have been more than an empty shell."
> *Frank v. Mangum*, 237 U.S. 309,346.

WHEREAS,

> "When the decision of the question of fact is so interwoven with the decision of the question of constitutional right that the one necessarily involves the other, the Federal court must examine the facts."
> IBID, at 347.

WHEREAS,

absent a forum for discussion that is both meaningful and appropriate to the matter at

hand, in lieu of judicial review of status, Petitioner is currently in restraint of his liberty; he is held within the constructive jurisdiction and custody of the SSA, a created legal interest foreign to his birthright; he is presumptively held to a condition of involuntary servitude and debt bondage; he suffers ongoing trespass and detriment, both *in personam* and *in rem*; his property is seized as an unlawful detainer and stripped of all utility; his common right has been rendered barren; his most sacred right to sustain himself has been substantially impaired; his right to be secure in his person has been substantially impaired; his right to life, liberty, and property has been substantially impaired; and, his direct access to the Law of the Land and its attendant Bill of Rights, both enumerated and unenumerated, has been substantially impaired.

THEREFORE,

it is now upon the Court "to look behind the bare record", *Peyton v. Rowe*, 391 U.S. 54,59, 'examine the facts', and investigate this matter in light of the merits and questions of law thus presented.

CONCLUSION

Standing firmly upon the foregoing, and the record as it exists, Petitioner hereby respectfully requests that a writ of certiorari issue to the Court of Appeals for the Ninth Circuit to review the questions presented herein.

So submitted this 16th day of August, 1989; with all due respect;

FRANK A. ENGLAND, III
129 Carlisle Street
Benecia, CA 94510
(707) 745 4257
Petitioner Pro Se

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK AUSTIN ENGLAND, III, Plaintiff-Appellant, v. DORCAS HARDY, Commissioner of Social Security, Defendent-Appellee.	No. 88-2479 DC No. CV-88-0411-JPV ORDER

Before: POOLE, REINHARDT, and O'SCANNLAIN, Circuit Judges

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the en banc suggestion, and no judge of the court has requested a vote on it.

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

—0—

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK AUSTIN ENGLAND, III,	)	CA No. 88-2479
Plaintiff-Appellant,	)	DC No. CV-88-0411-JPV
v.	)	NORTHERN CALIFORNIA
DORCAS HARDY, Commissioner of Social Security,	)	
Defendent-Appellee.	)	ORDER

Appellant FRANK AUSTIN ENGLAND, III's motion to appear and argue merits of the case is DENIED. This matter shall be submitted on the briefs and record, without oral argument, on Tuesday, April 5, 1989, in San Francisco.

By Direction of the Court

CATHY A. CATTERSON
Clerk of Court

(signature)
Arden Wong
Deputy Clerk

———————o———————

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANK AUSTIN ENGLAND, III, Petitioner, v. DORCAS HARDY, Commissioner of Social Security Administration, Respondent.	No. C-88-0411-JPV ORDER OF DISMISSAL

Petitioner, Frank Austin England, III, seeks relief by way of a writ of habeas corpus from the imposition of involuntary support of the federal Social Security system pursuant to 28 U.S.C. § 2241 et seq. The jurisdiction of this Court to issue a writ of habeas corpus extends only to a prisoner who is in custody. 28 U.S.C. § 2241(c); Peyton v. Rowe, 391 U.S. 54, 58-59 (1968). Mr. England is neither a prisoner nor in custody. Thus, this Court lacks subject matter jurisdiction over this action. Because

it appears from the face of the petition that petitioner can prove no set of facts in support of his claim that would entitle him to relief, this action must be dismissed. Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

Accordingly, IT IS HEREBY ORDERED that the petition for a writ of habeas corpus is DENIED. This action is DISMISSED WITH PREJUDICE.

DATED: (illegible)

(signature)

J. P. VUKASIN, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX D

ARTICLE I, Section 9, Clause 2:

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may_require it.

ARTICLE of AMENDMENT I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE of AMENDMENT IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly descri-

bing the place to be searched, and the persons or things to be seized.

ARTICLE of AMENDMENT V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE of AMENDMENT IX:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE of AMENDMENT X:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE of AMENDMENT XIII:

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

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(2)

Supreme Court, U.S.
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—o—

SUPPLEMENTAL APPENDIX
to
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

—o—

FRANK A. ENGLAND, III
Pro Se
129 Carlisle Street
Benicia, CA 94510
(707) 745 4257

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"MEMORANDUM" 1

PURPOSE

As per this Court's letter of October 4, 1989, and in order to comply with Rule 21 of the Rules of the Supreme Court, Petitioner herewithin presents, with footnotes, the "MEMORANDUM" decision of the Ninth Circuit Court of Appeals, filed on April 10, 1989, and reproduced verbatim to the best of his ability.

So submitted this 12th day of October, 1989:

FRANK A. ENGLAND,III

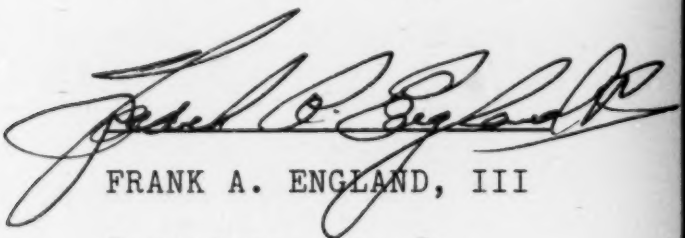
129 Carlisle Street
Benicia, CA 94510
(707) 745 4257

Petitioner Pro Se

ACKNOWLEDGMENT OF SERVICE

Petitioner, Frank A. England, III, did cause to be served upon the Solicitor General of the United States, three copies of this Supplemental Appendix, addressed to the Department of Justice, Washington, D.C., 20530, by depositing said document in the United States mail, with sufficient postage prepaid, this 12th day of October, 1989; sent by certified mail, article # P 753 677 817.

With all due Respect,



FRANK A. ENGLAND, III

Petitioner Pro Se

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANK AUSTIN ENGLAND, III Plaintiff-Appellant, v. DORCAS HARDY, Commissioner of Social Security, Defendant-Appellee.	No. 88-2479 DC No. CV-88-0411-JPV MEMORANDUM*

Appeal from the United States District Court for the Northern District of California
John P. Vukasin, District Judge, Presiding

Submitted April 5, 1989**
San Francisco, California

Before: POOLE, REINHARDT, and O'SCANNLAIN, Circuit Judges

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for submission on the record and briefs and without oral argument. Fed. R. App. P. 34(a), Ninth Circuit Rule 34-4.

In July 1984, Frank Austin England, III ("England" or "appellant") began correspondence with the Social Security Administration ("SSA"), indicating his belief in a lawful right to withdraw from the social security program. He was informed by the SSA that the law does not permit individuals to voluntarily withdraw from the program. Nonetheless, England renewed his insistence on a right to withdraw from the program. England was again denied his request.

On February 8, 1988, England filed an application for writ of habeas corpus claiming that he was being denied his liberty to withdraw from the social security program. On March 28, 1988, the district court dismissed the petition for lack of subject matter jurisdiction. England timely appeals.

ANALYSIS

A. Standard of Review

The decision whether to grant or deny a

petition for habeas corpus is reviewed de novo. Chatman v. Marquez, 754 F.2d 1531, 1533-34 (9th Cir.), cert. denied, 474 U.S. 841 (1985).

B. Merits

Appellant argues that he is within the meaning of being either a "prisoner" or in "custody" in that he is being forced to contribute to the Social Security program by way of imposed taxes. Thus, he seeks relief by way of a writ of habeas corpus from the imposition of involuntary support of the federal Social Security system pursuant to 28 U.S.C. § 2241 et seq.

Section 2241(c) states that:

> The writ of habeas corpus shall not extend to a prisoner unless-
>
> (1) He is in custody under or by color of the authority of the United States . . .
>
> (2) He is is custody for an act done or omitted in pursuance of an Act of Congress . . .

> (3) He is in custody in violation of the Constitution of laws . . .
>
> (4) He, being a citizen of a foreign state and domiciled therein, is in custody . . .
>
> (5) It is necessary to bring him into court to testify or for trial . . .

Section 2241(c) has been interpreted as extending the jurisdiction of the court to issue a writ of habeas corpus only to a prisoner who is in custody. Peyton v. Rowe, 391 U.S. 54, 58-59 (1968).

England contends that he is within the meaning of being either a prisoner or in custody relying in part on definitions of "prisoner" and "custody" provided in Black"s Law Dictionary, 2d ed. (1910).

England purports to find support in Jones[1] v. Commissioner, 371 U.S. 236 (1963), where the Court said that "besides physical imprisonment, there are other restraints on a man's

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1 [Jones v. Cunningham]

liberty, restraints that shared[2] by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus." Id. at 240. Presumably, England perceives his mandatory contributions to the Social Security system to be a restraint on his liberty to be free of tax obligations, a restraint sufficient to support the issuance of habeas corpus.

Yet, a careful reading of Jones clearly distinguishes it from the instant case. In Jones, the Court noted that the petitioner had not been unconditionally released from jail. Further, the Court noted that in some of the cases upon which the court of appeals relied, "the petitioner had been completely and unconditionally released from custody; such cases are obviously not controlling here...." Jones, 371 U.S. at 241 (footnote Omitted). Thus, even Jones requires physical

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2 [... restraints NOT shared...]

custody before appellant may have a cause of action. Id.

The facts in the present case do not show that England was ever in custody or a prisoner in the sense espoused by Jones. See generally Jones, 371 U.S. at 236. Because England is neither a prisoner nor in custody, the district court lacked subject matter jurisdiction. Therefore, the action was properly dismissed. Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

AFFIRMED.